

Judd Contracting, Inc. and Lee W. Straughter. Case
7-CA-43054

November 22, 2002

DECISION AND ORDER

BY MEMBERS LIEBMAN, COWEN, AND BARTLETT

The General Counsel seeks summary judgment in this case on the ground that the Respondent has failed to file an answer to the compliance specification.

On May 23, 2001, the Board issued an Order adopting the Decision issued by Administrative Law Judge Earl E. Shamwell Jr. on April 5, 2001.¹ The Board's Order directed the Respondent to, among other things, make Lee W. Straughter whole for any loss of earnings and other benefits resulting from his discharge in violation of the National Labor Relations Act. On October 4, 2001, the United States Court of Appeals for the Sixth Circuit entered its judgment enforcing the Board's Order in its entirety.²

A controversy having arisen over the amount of backpay due Straughter, on March 21, 2002, the Regional Director issued a compliance specification and notice of hearing alleging the amount due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer.

By letter dated April 16, 2002, the Regional Attorney for Region 7 advised the Respondent that it had not filed an answer to the compliance specification and that unless an appropriate answer was filed by April 25, 2002, summary judgment would be sought. The Respondent did not file an answer. Instead, the Respondent sent a letter to the Region dated April 29, 2002, which stated that there was no dispute regarding the amount of net backpay, but that the Respondent "is currently without funds to satisfy the backpay."

On May 13, 2002, the General Counsel filed with the Board a Motion for Summary Judgment, with exhibits attached. On May 22, 2002, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent did not file a response. The allegations in the motion and in the compliance specification therefore are undisputed.

¹ Unpublished Order. No exceptions were filed to the judge's Decision.

² This enforcement order issued as a mandate on November 28, 2001.

Ruling on the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that a respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment.³ Accordingly, we conclude that the net backpay due discriminatee Straughter is as stated in the compliance specification⁴ and we will order payment by the Respondent of that amount to him, plus interest accrued on the amount to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, Judd Contracting, Inc., Detroit, Michigan, its officers, agents, successors, and assigns, shall make Lee W. Straughter whole by paying him \$26,410.90, plus interest as set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and minus tax withholdings required by Federal and State laws.

³ As mentioned above, the Respondent's April 29, 2002 letter to the Region agreed to the amount of net backpay, but claimed an inability to pay. The Respondent's financial situation does not constitute good cause for failure to file an answer, nor is it otherwise a basis for denying the General Counsel's Motion for Summary Judgment. See, e.g., *Harvey Reed's Lawn Care Services Co.*, 321 NLRB 1002 fn. 1 (1996), and *Beaumont Glass Co.*, 316 NLRB 35 fn. 1 (1995).

Moreover, even assuming arguendo that the Respondent's April 29, 2002 letter should be construed as an answer to the compliance specification, we find that it was untimely filed, that it was unaccompanied by a showing of good cause, and that, in any event, it admits the amount of backpay due.

⁴ We have corrected minor errors in the listing and calculation of backpay set forth in schedule D of the compliance specification, in order to conform the net backpay amount to the figures set forth in schedule C of the compliance specification.